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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

DATE: AUG 30 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner intends to serve as a domestic violence victim advocate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree (although the AAO will revisit this issue below). The sole issue in contention in the director's decision is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 11, 2011. The initial filing included Form ETA-750B, Statement of Qualifications of Alien, as required by the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii). On that form, asked to specify her work experience over the past five years, the petitioner listed only one position. The petitioner stated that she had worked as a market research analyst for [redacted], since October 2008, with the following duties: "Conduct market research and evaluate the company's competitive position; Enhance existing services, Establish trend and prepare reports for findings; Collect and analyze data on business customers; Collaborate with marketing professionals and sales representatives."

In an introductory statement, counsel stated that the petitioner seeks "a national interest waiver . . . so that she may stay in the U.S. and pursue work as a Domestic Violence Advocate." Counsel then offered various statistics and assertions regarding domestic violence, violence against women, and human trafficking. Counsel did not attempt to link the petitioner's intended advocacy work with

her training or experience as a market research analyst. Instead, counsel stated that the petitioner has a "demonstrated track record of self-less volunteering to work on domestic violence and trafficking issues."

Counsel stated that the petitioner:

> will provide culturally and linguistically competent services to Southeast Asian . . . victims of domestic violence and related crimes: including assistance with crisis intervention; respond to calls for assistance . . . ; orientation of victims to the court systems; making appropriate referrals to community resources . . . , provide advocacy-based counseling to survivors in a culturally relevant and linguistically appropriate manner; transportation or accompaniment when necessary; language advocacy and support or coordination thereof and follow-up support as women transition out of emergency shelters and secure permanent or transitional housing. [The petitioner] will also work to engage specifically the Indonesian American community on topics related to domestic violence, sexual assault, violence prevention, physical and mental health, healthy relationship, and related topics.

Counsel stated that the petitioner "has an extensive record of dedicated commitment and service to combatting domestic violence and violence against women. She has contributed a considerable amount of hours to the cause without expectation of pay to two well-known and established organizations," specifically [redacted] Counsel asserted that the petitioner "has been active with reaching out to and working with policy makers to advocate for domestic violence and trafficking awareness," and "has also published and written extensively" on the subject.

As evidence of her interaction with government officials, the petitioner submitted a photograph of five people, with others visible in the background indicating a somewhat crowded room. A caption identifies two of the principal five subjects as the petitioner and '[redacted] Another photograph shows the petitioner alone, posing beside a sign that gave directions to the offices of California Governor Arnold Schwarzenegger, the secretary of state (not named on the sign) and Senator Leland Y. Yee. The photographs do not show the extent or subject matter of any discussions between the petitioner and the other individuals shown or named.

Six witness letters accompanied the initial submission. [redacted] community projects coordinator for [redacted], stated:

> [The petitioner] has worked as our Indonesian language advocate in [redacted] for five years and has worked closely with me in anti-trafficking program. Her duties include providing culturally competent translation and interpretation, providing emotional support and accompaniment/advocacy for victims of trafficking and participating in our community outreach and education in the Indonesian community.
>
> I found her to be very committed, independent and creative/innovative. She is always available to support our clients, ready and eager to learn, and open to new

challenges. As a language advocate, [the petitioner] has provided much more than excellent translation, interpretation and accompaniment for clients. She has provided care, solidarity and hope. . . . Clients have shared with me that they felt really safe and comfortable with her. I want to note, that [the petitioner] never hesitated to take on new responsibilities, such as to learn – in two or three days, an array of legal terms both in English and in Indonesian so as to be able to provide a solid support for her clients. I deeply appreciate her commitment especially considering the fact that her background is in business and finance. . . .

[The petitioner] is an extremely important asset for our anti trafficking program and services and our community. Her skills, dedication and commitment are absolutely essential to our program and services' mission to create a violent-free lives [*sic*] for our clients.

[redacted], a full-time staff member at [redacted], stated:

I have worked with [the petitioner] for the last five years in her capacity as our Indonesian language advocate and as our volunteer. . . . She worked tirelessly to make sure that clients had a good grasp of the issues they were facing. . . .

I especially appreciated [the petitioner's] openness and courage in taking part in our organization's work to end violence, in it include ending homophobia . . . despite the possibility that she would be ostracized. . . . She is absolutely valuable in our work to support survivors of domestic violence and trafficking to start a new life. We need her!

[redacted], stated:

[The petitioner] is certified through the State of California as a human trafficking caseworker. . . .

I have been working with [the petitioner] now for over a year with three of my clients, all human trafficking victims. . . . [The petitioner] worked with me as an Indonesian interpreter and human trafficking advocate for all three cases. [The petitioner] spent no less than 50 hours at least on each client. . . .

Our office has seen a recent exponential rise in Indonesian human trafficking cases. . . . [The petitioner's] work with these clients means that she is already an expert in working with human trafficking clients in a way that most advocates cannot claim. This is what makes [the petitioner] so valuable to our work here in the United States. . . .

Without [the petitioner], our office would not have been able to assist any Indonesian victim of human trafficking.

[redacted] stated that the petitioner "voluntarily assisted [redacted] in raising funds for completing the challenge course site [redacted] concluded that the petitioner "is an extremely important asset to Non Profit Organization Fundraising field."

[redacted] (an "advocacy blog and news portal"), stated that the petitioner's "work in advancing the women's movement and immigrant communities . . . need[s] to gain more traction by your office's recognition that she has extraordinary and special abilities that will continue to be an asset especially in social services."

[redacted] the University of California, Berkeley, stated that the petitioner's "commitment to social justice coupled with her native fluency in both Indonesian and English make her an invaluable asset to our country."

Copies of electronic mail messages show that the petitioner has been on message chains regarding various gatherings and lobbying efforts. These materials show the petitioner's activity on these fronts but do not distinguish her significantly from other activists pursuing social causes. The messages themselves do not describe the nature or extent of the petitioner's involvement. Rather, the messages announced the events or discussed strategy questions. Later – sometimes years after the fact –the petitioner forwarded the messages to counsel, who printed them for submission. For example, a message chain from early 2008 described two conferences scheduled to take place later that year. The petitioner forwarded the message chain to counsel in February 2011 with the message "I have participated in both events."

In another electronic mail message (from early 2007), a producer for [redacted] invited the petitioner to "speak[] on camera . . . about [her] work with undocumented women from Asia." The record does not contain the petitioner's response to the message or any evidence that the petitioner actually appeared on the then-new cable network.

The petitioner submitted translated copies of five articles from [redacted] language magazine that employs the petitioner in "Correspondence and Sales Marketing." Three articles discussed the stories of individual victims (including the petitioner herself), while the others provided general information about domestic violence and human trafficking. Three articles show no visible dates; the two dated articles are from 2007 and 2008, respectively.

On June 29, 2011, the director issued a request for evidence, instructing the petitioner to meet the guidelines set forth in *NYSDOT* by submitting evidence that the benefit of her proposed employment will be national in scope, and to establish a past record of prior achievement that justified projections of future benefit to the national interest.

In response, counsel stated that the petitioner's "employment as a domestic violence advocate will involve educating the public across the country about domestic violence and fighting for change on the national level." The petitioner submitted no evidence that her past work had such scope. She worked with what appeared to be local organizations in and around San Francisco, and her published writings were in Malay, a language foreign to most Americans. Counsel did not explain

how or why the petitioner's future actions would take on greater scope than what she had done before.

Counsel correctly observed that "[d]omestic violence is a prevalent problem affecting women of all races, economic classes and education levels," but the petitioner's past work appears to have been narrowly targeted towards Indonesian women, specifically those recruited from impoverished communities, brought to the United States as domestic help and then confined in conditions resembling slavery. Counsel referred to "the 18,000 to 20,000 victims of human trafficking . . . every year," whereas the only witness to discuss the petitioner's case load mentioned three clients with the possibility of a fourth in the future. The question is not whether domestic violence and human trafficking are national problems, but whether the petitioner's own efforts in this area have had, and will continue to have national benefits.

Counsel claimed that the petitioner's work "has a Ripple Effect on the Nation at Large" because "even if she only counsels victims in one city, those victims in turn can move to other parts of the country and have family members in other geographic areas that are affected by the domestic violence." Dispersion of clients in this manner would dilute, rather than disseminate, the petitioner's impact and influence. The observation that clients can relocate applies to virtually every field of endeavor, effectively rendering the "national scope" test all but meaningless. There are different levels of advocacy, ranging from one-on-one work with a small number of individual clients up to leading a national or international organization that coordinates activities in many geographical areas while maintaining contact with policy makers at the national level.

Citing the petitioner's prior submissions, counsel asserted that the petitioner "is a published author, performer, certified caseworker who has an extensive record of dedicated commitment and service to combatting domestic violence against women and human trafficking." The AAO notes that the record does not contain first-hand documentation of the petitioner's claimed caseworker certification. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Several exhibits accompanied the petitioner's response to the request for evidence, but for the most part these submissions repeat, rather than supplement, the initial submission. One exception is an electronic mail message from [redacted] the attorney who had previously provided a letter in support of the petition. The new message, dated June 1, 2011, informed the petitioner that nonimmigrant "visas have been approved" for two clients. Other recent evidence shows that the petitioner has worked with the [redacted] on projects such as a staging [redacted]. This information neither establishes the national scope of the benefit arising from the petitioner's work nor shows that the petitioner's accomplishments set her apart from others performing similar work.

The director denied the petition on November 1, 2011. In the denial notice, the director described the petitioner's various submissions and quoted from [redacted]'s letter. The director acknowledged the intrinsic merit of advocacy for victims of abuse and trafficking, but found that the petitioner had not shown her influence on the field. The director also stated:

> The petition does not present a credible job offer. The petitioner has been working as a volunteer at the [redacted] providing translation services. However, no official with any of the agencies she is helping has indicated what the petitioner would do if she was granted residency. . . . [T]he petitioner lists [redacted], as her employer.

On appeal, counsel observes that the denial decision "does not mention any failure in showing that the proposed benefit will be national in scope. Thus, it should be deemed that this prong had been satisfied by [the petitioner's] response to the Service's Request for Evidence." Counsel's conclusion, however, does not follow from the stated premise. The director, as counsel acknowledges, found that the petitioner had not shown how she will work as an advocate. Absent this crucial information, there can be no affirmative basis for a finding that the benefit from the petitioner's future work will be national in scope.

Counsel acknowledges the director's observation of "the lack of a job offer," but dismisses this concern because "the national interest waiver application . . . seeks to waive the requirement of a job offer." Counsel's reasoning relies on a conflation of two senses of the phrase "job offer." The "job offer requirement" in statute and regulation involves labor certification and other factors such as financial documentation to show a prospective employer's ability to pay the proffered wage. The omission of such information is not what concerned the director. The director observed that the petitioner has never claimed employment as an advocate; her only claimed employment experience has been in the very different field of marketing.

The petitioner has not indicated whether she would pursue actual employment as an advocate, nor has she shown that opportunities exist in that regard for a worker with her qualifications. Instead, the petitioner has documented her history as a volunteer, and expressed a vague intention to continue to pursue the same cause. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *NYSDOT*, 22 I&N Dec. at 219.

Counsel states that the labor certification process would "potentially deprive the potential employer of the services of [the petitioner]," but counsel does not identify "the potential employer" even though the lack of information about intended employment was a basis for denial of the petition. Counsel contends that the petitioner's "dedication, experience, passion and achievements . . . are qualities that cannot be articulated on an application for a labor certification." The petitioner, however, has not shown that these qualities have meaningfully distinguished her from qualified workers in the field.

Counsel asserts that the petitioner's witness letters should have sufficed to establish the petitioner's eligibility for the waiver. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and the AAO has given the witness letters due consideration. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of witness letters supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters in the record establish that the petitioner has been active in helping Indonesian women in the Bay Area, but there exists no blanket waiver for individuals performing such work. The letters focus on the petitioner's particular strengths and her dedication, but no indication of how the petitioner's work has had broader influence in the field.

Counsel states that the petitioner "has been tapped to lend support to advocacy events. . . . This [in] and of itself demonstrates the [petitioner's] influence on the community over other persons who may have the same minimum qualifications." Counsel does not explain how "lend[ing] support to advocacy events" is, on its face, proof of "influence on the community."

Counsel protests that the director "did not sufficiently consider [the petitioner's] publications in a leading Indonesian magazine." The only evidence that [redacted] is "a leading Indonesian magazine" is a self-serving promotional brochure from the magazine's publisher, aimed at soliciting advertising. Counsel does not explain or document the effect that the petitioner's articles have had outside the Malay-speaking community.

For the reasons discussed above, the AAO will affirm the director's finding that the petitioner has not established eligibility for the national interest waiver. Review of the record reveals another ground for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The director, in the denial notice, stated: "USCIS accepts that an advanced degree or exceptional ability is required by the occupation, and that the petitioner holds the requisite advanced degree or exceptional ability as required under USCIS law." The record does not support this finding.

The petitioner has never claimed eligibility for classification as an alien of exceptional ability in the sciences, the arts, or business. She has only claimed eligibility for classification as a member of the professions holding an advanced degree. The record does not support this claim.

Counsel's introductory statement included the observation that the petitioner has pursued two distinct lines of work. Counsel attempted to use one of them to justify the classification sought, and the other one to justify the waiver claim. Counsel cited the Department of Labor's *Occupational Outlook Handbook* (*OOH*) to support the assertion that the occupation of a market research analyst often requires "extensive post-secondary education," and that "a Domestic Violence Advocate is a professional occupation." Counsel then stated:

> Petitioner holds a Master of Business Administration degree from Lincoln University, located in Oakland, CA. Petitioner possesses a Bachelor of Arts degree in Business Administration from [Lincoln University in] Oakland, CA. Finally, Petitioner possesses a Certificate in Marketing specializing in Integrated Marketing Communications from the University of California, Berkeley. . . .
>
> Accordingly, by virtue of her possession of an advanced degree and her professional status as a Market Research Analyst, Petitioner is statutorily eligible for classification as a priority worker pursuant to Section 203(b)(2) of the Act.

Counsel, thus, relied on the petitioner's education and employment in marketing to establish that she is a member of the professions holding an advanced degree. Counsel then relied entirely on the petitioner's domestic violence advocacy to support the claim that she qualifies for a national interest waiver. The petitioner has shown no meaningful connection between her academic degrees and the advocacy work upon which her waiver claim rests.

The degree or major must be academically appropriate to the profession for which petitioned. *Matter of Katigbak*, 14 I&N Dec. 45, 46 (Reg'l Comm'r 1971). Here, the petitioner has not shown that any of her academic degrees or majors are academically appropriate to the occupation for which she seeks a national interest waiver. Academic transcripts in the record do not show any course titles that self-evidently relate to advocacy work.

Furthermore, to justify the claim that "a Domestic Violence Advocate is a professional occupation," counsel cited the *OOH* entry for "Social Workers." The terms "Domestic Violence Advocate" and "Social Worker" are not interchangeable; the petitioner's past volunteer work does not make her a qualified "Social Worker" as defined in the *OOH*. That same source states, under the heading "How to Become a Social Worker":

> A bachelor's degree in social work (BSW) is the most common requirement for entry-level positions. However, some employers may hire workers who have a bachelor's degree in a related field, such as psychology or sociology.
>
> BSW programs prepare students for direct-service positions such as caseworker or mental health assistant. These programs teach students about diverse populations, human behavior, and social welfare policy. All programs require students to complete supervised fieldwork or an internship.

> Some positions, including those in schools and in healthcare, frequently require a master's degree in social work (MSW). All clinical social workers must have an MSW.
>
> MSWs generally take 2 years to complete. Some programs allow those with a BSW to earn their MSW in 1 year. MSW programs prepare students for work in their chosen specialty and develop the skills to do clinical assessments, manage a large number of clients, and take on supervisory duties. All programs require students to complete supervised fieldwork or an internship.[1]

The petitioner has not claimed or demonstrated that she has completed any of the necessary course work to qualify as a social worker. Counsel, therefore, was not justified in citing the *OOH* entry for "Social Workers" to justify the claim that "a Domestic Violence Advocate is a professional occupation." If the petitioner intends to work as a social worker in the United States, then it is highly relevant that she claims none of the qualifications of a social worker.

Absent evidence of qualification as a social worker, the petitioner's claim to be a member of the professions holding an advanced degree rests entirely on her degrees in business and marketing, and on her subsequent employment as a market research analyst. If the petitioner intends to continue working as a market research analyst, then she qualifies as a member of the professions, but the petitioner has made no claim that her work as a market research analyst qualifies her for the national interest waiver of the job offer requirement. If, on the other hand, the petitioner intends to abandon that profession, then she must also abandon her claim to be a member of the professions. In order to qualify as a member of the professions, the petitioner must intend to engage in the profession which the claim to the preference classification is based. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977), citing *Matter of Kim*, 13 I&N Dec. 16 (Reg'l Comm'r 1968). The petitioner cannot use her past history as a market research analyst to qualify as a member of the professions, and also rely on her intended future work as a domestic violence victim advocate to qualify for the waiver.

The regulatory definition of a profession indicates that a profession must be an "occupation," specifically "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). USCIS provides the following definition of the term "occupation": "For an alien entering the United States or adjusting without a labor certification, occupation refers to the employment held in the country of last legal residence or in the United States. For an alien with a labor certification, occupation is the employment for which certification has been issued."[2] By tying the term "occupation" with the term "employment," USCIS has taken the position that an uncompensated spare-time activity, however earnest the alien's devotion to it, is not an "occupation" for immigration purposes. Anything that is not an occupation cannot meet the regulatory definition of a profession.

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[1] http://www.bls.gov/ooh/Community-and-Social-Service/Social-workers.htm#tab-4 (printout added to record August 22, 2012).

[2] The definition appears in USCIS's glossary at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9aea8fa29935f010VgnVCM1000000ecd190aRCRD (printout added to record August 22, 2012).

The above understanding of the term "occupation" is consistent with section 203(b) of the Act, which, by its plain wording, refers and applies to "Employment-Based Immigrants." Under the statute, an alien qualifies for the waiver through "employment-based" activities, rather than through uncompensated activities that are separate from the alien's paid employment.

For the above reasons, the AAO will withdraw the finding that the petitioner qualifies for classification as a member of the professions holding an advanced degree.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.